

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Prathima Price, Esq., SBN 321378  
Dennis Price, Esq., SBN 279082  
Mail: 8033 Linda Vista Road, Suite 200  
San Diego, CA 92111  
(858) 375-7385; (888) 422-5191 fax  
[amandas@potterhandy.com](mailto:amandas@potterhandy.com)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**The Counter Mountain View**

**LP**, a California Limited

Partnership;

**CI Management LLC**, a California

Limited Liability Company

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of The Counter Mountain View LP, a California Limited Partnership; CI Management LLC, a California Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1       2. Defendants The Counter Mountain View LP and CI Management LLC  
2 owned The Counter located at or about 2580 W El Camino Real, Mountain  
3 View, California, in February 2021.

4       3. Defendants The Counter Mountain View LP and CI Management LLC  
5 own The Counter (“Restaurant”) located at or about 2580 W El Camino Real,  
6 Mountain View, California, currently.

7       4. Plaintiff does not know the true names of Defendants, their business  
8 capacities, their ownership connection to the property and business, or their  
9 relative responsibilities in causing the access violations herein complained of,  
10 and alleges a joint venture and common enterprise by all such Defendants.  
11 Plaintiff is informed and believes that each of the Defendants herein is  
12 responsible in some capacity for the events herein alleged, or is a necessary  
13 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
14 the true names, capacities, connections, and responsibilities of the Defendants  
15 are ascertained.

16  
17       **JURISDICTION & VENUE:**

18       5. The Court has subject matter jurisdiction over the action pursuant to 28  
19 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
20 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
22 of action, arising from the same nucleus of operative facts and arising out of  
23 the same transactions, is also brought under California’s Unruh Civil Rights  
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
26 founded on the fact that the real property which is the subject of this action is  
27 located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

8. Plaintiff went to the Restaurant in February 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in February 2021, but he wanted to return and patronize the business several times but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

9. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

10. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible dining surfaces in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

11. The Restaurant provides dining surfaces to its customers but fails to provide wheelchair accessible dining surfaces.

12. A problem that plaintiff encountered is the lack of sufficient knee or toe clearance under the outside dining surfaces for wheelchair users.

13. Plaintiff believes that there are other features of the dining surfaces that likely fail to comply with the ADA Standards and seeks to have fully compliant dining surfaces available for wheelchair users.

14. On information and belief the defendants currently fail to provide wheelchair accessible dining surfaces.

15. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

16. As a wheelchair user, the plaintiff benefits from and is entitled to use wheelchair accessible facilities. By failing to provide accessible facilities, the defendants denied the plaintiff full and equal access.

17. The failure to provide accessible facilities created difficulty and

1 discomfort for the Plaintiff.

2 18. The defendants have failed to maintain in working and useable  
3 conditions those features required to provide ready access to persons with  
4 disabilities.

5 19. The barriers identified above are easily removed without much  
6 difficulty or expense. They are the types of barriers identified by the  
7 Department of Justice as presumably readily achievable to remove and, in fact,  
8 these barriers are readily achievable to remove. Moreover, there are numerous  
9 alternative accommodations that could be made to provide a greater level of  
10 access if complete removal were not achievable.

11 20. Plaintiff will return to the Restaurant to avail himself of its goods or  
12 services and to determine compliance with the disability access laws once it is  
13 represented to him that the Restaurant and its facilities are accessible. Plaintiff  
14 is currently deterred from doing so because of his knowledge of the existing  
15 barriers and his uncertainty about the existence of yet other barriers on the  
16 site. If the barriers are not removed, the plaintiff will face unlawful and  
17 discriminatory barriers again.

18 21. Given the obvious and blatant nature of the barriers and violations  
19 alleged herein, the plaintiff alleges, on information and belief, that there are  
20 other violations and barriers on the site that relate to his disability. Plaintiff will  
21 amend the complaint, to provide proper notice regarding the scope of this  
22 lawsuit, once he conducts a site inspection. However, please be on notice that  
23 the plaintiff seeks to have all barriers related to his disability remedied. See  
24 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
25 encounters one barrier at a site, he can sue to have all barriers that relate to his  
26 disability removed regardless of whether he personally encountered them).

27  
28 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

1 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
2 Defendants.) (42 U.S.C. section 12101, et seq.)

3 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
4 again herein, the allegations contained in all prior paragraphs of this  
5 complaint.

6 23. Under the ADA, it is an act of discrimination to fail to ensure that the  
7 privileges, advantages, accommodations, facilities, goods and services of any  
8 place of public accommodation is offered on a full and equal basis by anyone  
9 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
10 § 12182(a). Discrimination is defined, inter alia, as follows:

- 11 a. A failure to make reasonable modifications in policies, practices,  
12 or procedures, when such modifications are necessary to afford  
13 goods, services, facilities, privileges, advantages, or  
14 accommodations to individuals with disabilities, unless the  
15 accommodation would work a fundamental alteration of those  
16 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 17 b. A failure to remove architectural barriers where such removal is  
18 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
19 defined by reference to the ADA Standards.
- 20 c. A failure to make alterations in such a manner that, to the  
21 maximum extent feasible, the altered portions of the facility are  
22 readily accessible to and usable by individuals with disabilities,  
23 including individuals who use wheelchairs or to ensure that, to the  
24 maximum extent feasible, the path of travel to the altered area and  
25 the bathrooms, telephones, and drinking fountains serving the  
26 altered area, are readily accessible to and usable by individuals  
27 with disabilities. 42 U.S.C. § 12183(a)(2).

28 24. When a business provides facilities such as dining surfaces, it must

1 provide accessible dining surfaces.

2 25. Here, accessible dining surfaces have not been provided in  
3 conformance with the ADA Standards.

4 26. The Safe Harbor provisions of the 2010 Standards are not applicable  
5 here because the conditions challenged in this lawsuit do not comply with the  
6 1991 Standards.

7 27. A public accommodation must maintain in operable working condition  
8 those features of its facilities and equipment that are required to be readily  
9 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 28. Here, the failure to ensure that the accessible facilities were available  
11 and ready to be used by the plaintiff is a violation of the law.

12  
13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
14 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
15 Code § 51-53.)

16 29. Plaintiff repleads and incorporates by reference, as if fully set forth  
17 again herein, the allegations contained in all prior paragraphs of this  
18 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
19 that persons with disabilities are entitled to full and equal accommodations,  
20 advantages, facilities, privileges, or services in all business establishment of  
21 every kind whatsoever within the jurisdiction of the State of California. Cal.  
22 Civ. Code § 51(b).

23 30. The Unruh Act provides that a violation of the ADA is a violation of the  
24 Unruh Act. Cal. Civ. Code, § 51(f).

25 31. Defendants’ acts and omissions, as herein alleged, have violated the  
26 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
27 rights to full and equal use of the accommodations, advantages, facilities,  
28 privileges, or services offered.

32. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

33. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: April 5, 2021

CENTER FOR DISABILITY ACCESS

By: 

Amanda Seabock, Esq.  
Attorney for plaintiff